

## Kim DelNigro

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**From:** John Murray  
**Sent:** Tuesday, August 15, 2006 12:34 PM  
**To:** All Boards and Committees  
**Subject:** Draft Selectmen's Policies

On behalf of the Board of Selectmen I have attached are three draft Selectmen Policies. The BoS has asked that these policies be distributed to all Boards and Committees for comment. The BoS plans to vote on these policies at its September 11, 2006 meeting. If your Board or Committee wishes to comment on these policies, please e-mail me your comments no later than September 6, 2006. The earlier date will allow staff to distribute all comments to the Selectmen prior to their meeting on September 11th.

Thank you for your time and consideration.

John Murray

8/17/2006

**TOWN OF ACTON  
BOARD OF SELECTMEN**

**POLICY NO.**

**Date of Adoption:**

**SUBJECT: COMMERCIAL USE OF TOWN FACILITIES**

**DEFINITION: “Commercial Use” shall be defined use of a Town facility by a profit or non-profit organization to (1) sell a product or service, (2) to advertise a product, service or event, and/or (3) to sponsor by money, products, or in-kind services a Town event in exchange for promotional opportunities.**

**1. NEED FOR THIS POLICY:**

In light of the proliferation in the use of municipal locations, events and vehicles for commercial uses, there is a need for an overarching policy document.

**2. OBJECT OF THIS POLICY:**

To insure the quality of life and character of Acton is maintained, while (1) acting in a business-friendly manner and (2) the Town availing itself of revenue enhancing opportunities.

**3. PROJECTED IMPACT OF THIS POLICY:**

It is anticipated that adoption of this policy will increase the work load of the Board members and the town staff due to the license procedures specified herein.

**4. STATEMENT OF POLICY:**

1. The Town Clerk shall maintain a list, which shall be open for public review, of all opportunities for “Commercial Use” available within the Town. The list shall include a description of the “Commercial Use”, location, and all necessary quality standards and restrictions to be imposed by the Town. The fee charged for each license shall be set forth by the Board of Selectmen.
2. The Board of Selectmen shall consider issuing a license, upon petition and upon receipt of the appropriate fee, to all entities wishing to utilize Town property for any “Commercial Use.” The Board of Selectmen reserves the right to refuse to issue a license when in its sole judgment the Board decides it is in the interest of the Town.
3. The Town’s Chief Procurement Officer, as set forth in MGL Chapter 30B, shall insure that all licenses and awards are issued in compliance with Chapter 30B.

**(a) PROCUREMENT LAW**

Massachusetts General Laws, Chapter 30B, the Procurement Law, establishes procedures to follow for buying and selling most goods and services. In general, the law requires an open, fair and competitive process to accomplish the Town’s public purpose. The law applies to all procurements except for those items exempted within the statute, and those items governed by specific provisions of other statutes, such as public construction bid laws, the designer selection law, or the law governing takings by eminent domain.

- Chapter 30B establishes three sets of procedures for awarding

promotional/advertising rights.

- Value of less than \$5,000 – Use sound business practices to insure the Town receives market value
  - Value of greater than \$5,000 but less than \$25,000 – Seek formal price quotations from at least three entities and award the contract to the responsible entity offering the greatest value to the Town
  - Value of \$25,000 or more – Conduct a formal advertised competition using sealed bids or proposals.
- Chapter 30B allows the Town to establish any procedure that (1) meets the requirements of Chapter 30B, (2) preserves open and fair competition, (3) keeps all proposals on a common footing, and (4) allows manageable and meaningful comparisons. Such a process would need to include, at a minimum, (1) a fair estimate of value, (2) a full description of the product being sought or provided, and (3) evaluation criteria, which enumerates all of the Town's quality standards, and provide the responding entities with the exact criteria their proposals will be judged upon.
  - Who pays is irrelevant to whether procurement is subject to Chapter 30B. The law applies because there is an agreement between the Town of Acton and a vendor for the use of a property right of the Town. For example, a yearbook contract awarded by a school official falls under the law even though students and parents will pay for the yearbooks.

**5. MEANS BY WHICH THE POLICY SHALL BE IMPLEMENTED:**

Implementation of this policy shall be the responsibility of the Board of Selectmen. Once adopted by the Board of Selectmen, the policy shall be filed with the Town Clerk and kept available for inspection by the public.

**6. EFFECTIVE DATE OF THIS POLICY AND IMPLEMENTATION:**

Immediately upon adoption by the Board of Selectmen.

**7. DATE ON WHICH THE POLICY SHALL EXPIRE:**

Indefinite

**TOWN OF ACTON  
BOARD OF SELECTMEN**

**POLICY NO. \_\_\_\_\_**

**Date of Adoption:**

**SUBJECT: The production and distribution of public meeting minutes**

**DEFINITION:**

- “Governmental Body” – Every board, commission, committee or subcommittee – however elected, appointed or otherwise constituted, if authorized by the city or town. Massachusetts General Laws, Chapter 39, Section 23A.
  - Ad hoc or special committees that include private citizens in addition to “public officials” are governmental bodies, if established by a governmental body pursuant the Charter of the Town of Acton and Bylaws of the Town of Acton constitute a “Governmental Body”.
  - A committee established by a staff member to assist that individual is not a “Governmental Body”. *Connelly v. School Committee of Hanover*, 409 Mass 232 (1991).
  - A single member of a governmental body is not a subcommittee, even if acting on behalf of the committee. *Pearson V. Board of Selectmen of Longmeadow*, 49 Mass App. Ct. 119 (2000).
- “Meeting of a Governmental Body” – Any convening and deliberation of a “Governmental Body” for which a quorum is required in order to make a decision at which any public business or public policy matter over which the “Governmental Body” has supervision, control, jurisdiction or advisory power is discussed or considered.
  - In other words, if the matter discussed or opined upon with a quorum of a body or committee involves the body’s public business and would require a quorum to decide, it may only be considered by said quorum in a lawfully convened open public meeting. MGL C. 39, sec 23 A.
- “Records/Minutes” – The official record of a public meeting of a governmental body.

**1. NEED FOR THIS POLICY:**

Massachusetts General Laws, Chapter 39, Section 23B, the Open Meeting Law, developed from the principle that the democratic process depends on the public having timely knowledge of the considerations upon which governmental action is based. The Open Meeting Law and related statutes are intended to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based. At its most basic level, the Open Meeting Law requires, with limited exceptions, governmental bodies to do its business in public. The Open meeting law requires that a record of each meeting be maintained for public review.

There is a need to develop a policy to insure that minutes are properly constructed and distributed in a timely basis.

**2. OBJECT OF THIS POLICY:**

To assist members of governmental bodies in Acton to comply with the spirit of the Open Meeting Law and Public Records Law in publication of meeting minutes.

3. **PROJECTED IMPACT OF THIS POLICY:**

None.

4. **STATEMENT OF POLICY:**

(a) **OPEN MEETING LAW**

**Massachusetts General Laws, Chapter 39, Section 23B, the Open Meeting Law, requires that “a governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive session executive session.”**

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**“the records [minutes], required to be kept ... shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but ... such records need not include a verbatim record of discussions at such meetings.” MGL C. 66, sec.5A**

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Records of a governmental body include the minutes of all meetings, including executive session and subcommittees, and all documents and data made or received by the governmental body or its members in their official capacity. Some records may be “exempt from disclosure” under the state Public Records Law, MGL C. 4, Sec. 7, clause 26.

Draft minutes of all “Public Meetings” shall be sent to all other boards and committees, which have an interest in such proceedings, but at a minimum sent to the Acton Board of Selectmen via e-mail at BOS@acton-ma.gov, within 10 working days of the date the meeting was held. Each Board and Committee shall vote to approve the minutes of their previous meeting at their next scheduled meeting and issue the approved minutes to the Town Clerk and all other interested boards and committees within 10 working days of approval vote.

(b) **PUBLIC RECORDS LAW**

Massachusetts General Laws, Chapter 66, Section 10 the Public Records Law, gives a right of public access to “public records” which is defined to include any document, regardless of physical form or characteristics, made or received by a public official or employee to serve a public purpose, unless subject to a statutory exemption. Government records generated, received or maintained electronically, including electronic mail, constitute “public records” under this standard

Retention and destruction of these records should follow the schedule specified by Massachusetts General Laws, Chapter 66, Section 8. Printed records should be filed with related files of the appropriate office.

5. **MEANS BY WHICH THE POLICY SHALL BE IMPLEMENTED:**

Implementation of this policy shall be the responsibility of the Town Manager and the Town Clerk. Once adopted by the Board of Selectmen, the policy shall be filed with the Town Clerk and kept available for inspection by the public.

6. **EFFECTIVE DATE OF THIS POLICY AND IMPLEMENTATION:**

Immediately upon adoption by the Board of Selectmen.

7. **DATE ON WHICH THE POLICY SHALL EXPIRE:**

Indefinite.

**TOWN OF ACTON  
BOARD OF SELECTMEN  
POLICY NO. 1100**

**Date of Adoption:**

**SUBJECT: USE OF ELECTRONIC MAIL BY MEMBERS OF  
GOVERNMENTAL BODIES**

**DEFINITION: ELECTRONIC MAIL (e-mail):** Messages sent from computer to computer by any available means.

**1. NEED FOR THIS POLICY:**

In light of the proliferation in the use of personal computers, it has become common for persons, both at home and at work, to communicate through electronic mail (e-mail). E-mail relating to Town business is a "Public Document" subject to reproduction upon request, even if constituted on your private home or business system. In addition, e-mail communication may violate the Open Meeting law.

There is a need to develop a policy for the proper usage of e-mail between/among the members of all town boards and between/among those members and town staff. This policy needs to be applied consistently by all town boards and committees.

This policy is not intended to apply to internal e-mail. Communications between town staff members and employees on the local area network. The regulation of internal e-mail communication is the responsibility of the Town Manager.

**2. OBJECT OF THIS POLICY:**

To assist members of governmental bodies in Acton to comply with the Open Meeting Law and Public Records Law in their use of this method of communication.

**3. PROJECTED IMPACT OF THIS POLICY:**

To the extent members use this method of communication, it is anticipated that adoption of this policy will increase the work load of the board members and the town staff due to the record-keeping and formatting procedures specified herein.

**4. STATEMENT OF POLICY:**

**(a) OPEN MEETING LAW**

Massachusetts General Laws, Chapter 39, Section 23B, the Open Meeting Law, requires that all meetings of a governmental body shall be open to the public and that no quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any public matter. Meetings covered by the Law include discussion or consideration by a quorum of any public business or public policy matter over which the governmental body has supervision, control, jurisdiction, or advisory power.

- Thus, no substantive discussion by a quorum of members of a governmental body about public business within the jurisdiction of the governmental body is permissible except at a meeting held in compliance with the requirements of the Open Meeting Law. Any convening and deliberation of a "Governmental Body" for which a quorum is required in order to make a decision at which any public business or public policy matter over which the "Governmental Body" has supervision, control, jurisdiction or advisory power is discussed or considered requires a open public meeting.

- In other words, if any matter is presented, discussed or opined upon with a quorum of a body or committee and it involves the body's public business and would require a quorum to decide, it may only be considered by said board or committee in a lawfully convened open public meeting. MGL C. 39, sec 23 {Sending substantive commentary or opinions via e-mail and requesting that no reply be made violates the intent of the Open Meeting Law}.
- "Governmental Body" – Every board, commission, committee or subcommittee – however elected, appointed or otherwise constituted, if authorized by the city or town. MGL C. 39, sec. 23A.
  - Ad hoc or special committees that include private citizens in addition to "public officials" are governmental bodies, if established by a governmental body pursuant the Charter of the Town of Acton and Bylaws of the Town of Acton constitute a "Governmental Body".
  - A committee established by a staff member to assist that individual is not a "Governmental Body". Connelly v. School Committee of Hanover, 409 Mass 232 (1991).
- A single member of a governmental body is not a subcommittee, even if acting on behalf of the committee. Pearson V. Board of Selectmen of Longmeadow, 49 Mass App. Ct. 119 (2000)
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Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body, that relate to public business, violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail meeting. The Law is based on the premise that the public is entitled to see the process of government, and not simply its result.

#### **(b) PROPER USES OF E-MAIL**

Certain housekeeping matters may be communicated outside of a meeting and can be done properly by e-mail. Questions concerning meeting cancellations and scheduling, or requests to put items on the agenda, without argument, are properly communicated outside a meeting. Other proper uses of e-mail may be to permit members of a governmental body to communicate with town department heads or staff. Both members of governmental bodies and town employees, however, must take care not to utilize such communications to poll board members or otherwise engage in deliberations, which would deprive the citizens of Acton the opportunity to witness and/or participate in deliberations in their entirety.

Members of governmental bodies should be cautious about communicating via e-mail on an individual basis. This is because private, serial conversations may reach a quorum of members without the knowledge of the sending participant. Private, serial discussions of public business, involving a quorum, violate the Open Meeting Law regardless of the knowledge or intent of the parties.

#### **(c) PUBLIC RECORDS LAW**

Massachusetts General Laws, Chapter 66, Section 10 the Public Records Law, gives a right of public access to "public records" which is defined to include any document, regardless of physical form or characteristics, made or received by a public official or employee to serve a public purpose, unless subject to a statutory exemption. Government records generated, received or maintained electronically, including electronic mail, constitute "public records" under this standard

All e-mail generated or received through the Town's e-mail server is automatically archived for public review.

Should the message be of general interest to the specific governmental body, it should be provided to all the members through normal distribution methods at a public meeting.

Retention and destruction of these records should follow the schedule specified by Massachusetts General Laws, Chapter 66, Section 8. Printed records should be filed with related files of the appropriate office.

#### **(d) LITIGATION DISCOVERY ISSUES**

State and Federal rules of discovery make clear that e-mail communications, even when not reduced to hard copy, are subject to disclosure in a response to an opposing party's request for documents, unless falling within one of the few privileges against disclosure such as communication with an attorney on matters of confidential issues properly identified as such by law. Board members should understand that any electronic communication between them and Town Hall may be subject to subpoena by a court of law.

E-mail statements are frequently the most troublesome documentary evidence in the defense of litigation. This is because they are often made hurriedly, can be sometimes less than completely accurate, are more candid in nature, and are not fully appreciated for their extended "shelf life." Whatever is communicated by e-mail should, therefore, be sent with the possibility it may become evidence in future litigation.

### **(e) ELECTRONIC ACCESS FROM BOARD MEMBERS TO TOWN HALL**

Currently approximately 30,000 e-mail messages per month are processed through the Town's e-mail server. Each message is automatically archived for retention purposes and becomes the property of the Town of Acton.

The recipient of a message shall use his or her discretion to determine whether it is a personal message from one member or a public document because a quorum of members are copied on the message or because it refers to a matter of public business. Notwithstanding, the independent decisions of the sender and recipient a copy will exist in the Town's archive. E-mail will be treated as an informal method of communication, more formal than a phone call and less formal than a written memo.

The Town Manager will maintain an electronic file of e-mail communications that he or she has determined to be public records. The files will be kept in the office, available for public review, for 3 months. At the end of 3 months, the files will either be destroyed (according to the guidelines of M.G.L. Chap. 66 Sect. 8) or placed within the Town Manager files. The electronic file will also be purged after a 3 month period using similar standards. Members sending an e-mail message to Town Hall should be aware that their message will be electronically archived and may be printed out for purposes of public access.

The Town Manager will endeavor to notify each Sender that the e-mail message has been received through an automatic reply system. This may be only an indication that the message was received, not that actions have been taken, depending on the content of the message; only messages addressed directly to the Town Manager will be responded to, not messages that be/she has been copied on.

Board members should indicate in their message the level of urgency, action, or response required. Given the volume of e-mails received, board members should follow-up with a phone call or a memo sent to the Town Manager to be sure the importance and requested action is understood.

### **5. MEANS BY WHICH THE POLICY SHALL BE IMPLEMENTED:**

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### **6. EFFECTIVE DATE OF THIS POLICY AND IMPLEMENTATION:**

Immediately upon adoption by the Board of Selectmen.

### **7. DATE ON WHICH THE POLICY SHALL EXPIRE:**

Indefinite

## **SOURCES:**

Middlesex District Attorney's Office. Open Meeting Guidelines. 2003

Pearson v. Board of Selectmen of Longmeadow, 49 Mass. App. Ct. 119, 125 (2000)

Middlesex County District Attorney's Office. Guidelines for use of E-mail by members of governmental bodies. 1996

Harshbarger v. Board of Selectmen of Lexington, No. 88-3644 (Middlesex Super. Ct. August 18, 1989) (memorandum order granting summary judgment)

Shannon v. Boston City Council, No. 87-5397 (Suffolk Super. Ct. February 28, 1989 (memorandum order granting summary judgment)

Mass. Municipal Association Consulting Group, Handbook for Massachusetts Selectmen.

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Ropes and Gray. Memo to Acton-Boxborough Regional School District. Re: Public Access/Public Disclosure Implications of E-Mail Use. June 1, 1998